

## NOTICE OF DECISION

### BEFORE THE SKAGIT COUNTY HEARING EXAMINER

**Applicant:** PS103 LLC  
Pat Stephens  
P.O. Box 32330  
Bellingham, WA 98228

**Agent:** Marianne Manville-Ailles  
Skagit Surveyors & Engineers  
806 Metcalf Street  
Sedro Woolley, WA 98284

**Request/File No:** Zoning Variance, PL09-0476

**Location:** Between 16595 & 16887 Wood Road on north side, within a portion of S/2NE1/4 Sec. 23, T36N, R3E, W.M. (Parcels P48084, P48085)

**Land Use Designation:** Rural Resource - Natural Resource Land (RRc-NRL)

**Summary of Proposal:** To reduce the setback at the south property line from the adjacent resource lands from 200 feet to 100 feet for a proposed 10-lot CaRD land division

**SEPA Compliance:** Exempt

**Public Hearing:** June 9, 2010. No public testimony. Planning and Development Services recommended approval.

**Decision:** Approval, subject to conditions.

**Date of Decision:** July 8, 2010

**Reconsideration/Appeal:** A Request for Reconsideration may be filed with PDS within 10 days of this decision (SCC 14.06.180). The decision may be appealed to the Board of County Commissioners by filing an Appeal with PDS within 14 days of the date of the decision or decision on reconsideration, if applicable (SCC 14.06.120(9)).

**Online Text:** The entire decision can be viewed at:  
[www.skagitcounty.net/hearing examiner](http://www.skagitcounty.net/hearing_examiner)

## **FINDINGS OF FACT**

1. Pat Stephens seeks a variance to reduce the setback from the southern property line from the adjacent resource lands for a proposed 10-lot Conservation and Reserve Development (CaRD) land division.

2. The subject property is located between 16595 and 16887 Wood Road, within a portion of the S1/2NE1/4 Sec. 23, T36N, R3E, W.M. The property is zoned Rural Resource - Natural Resource Land (RRc-NRL).

3. The subject property is approximately 90 acres in size and is situated some distance north of Wood Road. The current configuration is the result of a boundary line adjustment with the property to the south. The subject property is vacant, mountainous and timbered. Access is by logging roads off of Wood Road, approaching from the south.

4. Ultimately, the applicant hopes to effect a 10-lot land division with 9 lots to be used for residential development. The remaining much larger land area will be kept as a separate open space lot. The lots will range in size from .63 acres to .98 acres. They will be served by onsite septic systems and a community water system.

5. Under the Land Division regulations, all buildings within CaRDs are subject to a 200-foot setback from adjacent NRL designated parcels. SCC 14.18.310(8)(b). The adjacent property is also in RRc-NRL zoning.

6. The applicant is asking for a setback of 100 feet from south property boundary of the parcel to the southernmost residential lot line. Therefore, the reduced setback will affect only one lot. Moreover, if the request is approved, the resulting setback from any building will, in fact, be greater than 100 feet, depending on the placement of buildings within the southerly lot.

7. Due to the topography, the parcel has only a limited building area located on the western portion of the property. The lots will be located in this area, to the west of the internal plat road. The drainfields will be placed in an area northeast of the road. The lots were made smaller than originally planned to accommodate steep slopes in the southwestern corner of the property. This corner will serve as a view easement area for three of the lots.

8. The proposed lots are long and narrow. They could be made smaller, but a variance would still be needed because the problem is lot width. The lots have been designed to be as narrow as feasible given the topography. Enough width must be provided to get a driveway from the road to the building areas on each lot. The requested setback reduction is the minimum necessary to fit the lots into the buildable area.

9. An identical setback reduction is requested for another 10-lot CaRD immediately to the south of the subject development. If both variances are granted, as between these properties, the setback between building lots will be 200 feet. Given the topography and the existing

vegetation, it appears that adequate screening and separation between the two developments will be provided

10. Currently there is no resource use of the site. However, the eastern half of the property is in a classified forestry taxation program and has a forest management plan associated with it. The proposed development area on the west side has limited forest resource production potential because of shallow soils and rock outcrops.

11. The proposed setback reduction, because it is between the building areas of two CaRD's, will have little, if any, effect on the resource use of adjacent property. It will have no effect on the ability to use the larger undeveloped area on the subject property for resource management.

12. The criteria for approval of a zoning variance are found at SCC 14.10.030(2), as follows:

(a) special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or building in the same district. Topics to be addressed include topographic and critical area constraints that make use of the particular site infeasible without the proposed variance.

(b) Literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of SCC Titles 14 and 15.

(c) The special conditions and circumstances do not result from the actions of the applicant.

(d) The granting of the variance requested will not confer on the applicant any special privilege that is denied by SCC Titles 14 and 15 to other lands, structures, or buildings in the same district.

(e) (f) (not applicable)

13. The applicant has provided a thorough discussion of the reasons for the variance request. The topography of the site provides the special conditions needed. Literal interpretation of the 200 foot setback would require placement of the lots on more steeply sloping ground with questionable suitability for development and potential critical area constraints. The effect would be to foreclose development possibilities that are available on other properties in the district. The situation is one over which the applicant has no control. The variance would result in the placement of lots in the location that best fits the site, consistent with the intent of CaRD provisions for clustering development, using infrastructure efficiently, and preserving large areas for resource use. Non-CaRD developments in the district would be subject to 50-foot setbacks. Accordingly, approval of the variance would not be a grant of special privilege.

14. The application was routed to various County departments for review. No objections to the variance were noted, however, review of access, septic, water, critical areas, and fire preparedness issues will await the land division process.

15. There was no public comment on this request, either in writing or orally. The Staff Report recommended approval.

16. The reasons set forth in the application justify the granting of the variance. The proposed CaRd is a reasonable use of the property and the variance is the minimum variance that will make this use possible. The granting of the variance will be in harmony with the general purpose and intent of the Unified Development Code and other applicable provisions of the Skagit County Code. The variance will not be injurious to the neighborhood or otherwise detrimental to public welfare.

17. Any conclusion herein which may be deemed a finding is hereby adopted as such.

### **CONCLUSIONS OF LAW**

1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding. SCC 14.06.050(1)(b)(i), 14.10.020(3).

2. The request is exempt from the procedural requirements of the State Environmental Policy Act (SEPA).

3. The proposal is consistent with the resource protection objectives of Natural Resource Land zoning and CaRD subdivision development.

4. The proposal is consistent with the standards for variance approval set forth in SCC 14.10.030(2) and 14.10.040.

5. There is variation, and perhaps inconsistency, in standards and flexibility for setbacks relating to Natural Resource Lands. See SCC 14.16.430(5), 14.16.810(7) and 14.18.310(8)(b). The Examiner does not address this subject. The variance recommended here is from the most restrictive standard.

6. Any conclusion herein which may be deemed a finding is hereby adopted as such.

### **CONDITIONS**

1. The applicant shall conform to the setbacks as shown on the site diagrams submitted.

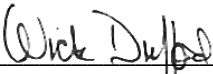
2. Except as allowed herein, the applicant shall comply with the Code provisions related to CaRD developments.

3. The variance number and date of approval shall be shown on the plat map.
4. The applicant shall comply with SCC 14.16.870, Notification of Development Activities on or Adjacent to Designated Resource Lands.

**DECISION**

The request variance (PL09-0476) to reduce the setback from the southern property line to 100 feet is approved, subject to the conditions set forth above.

**DONE** this 8th day of July, 2010.

  
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Wick Dufford, Hearing Examiner

Transmitted to Applicant on July 8, 2010.

See Page 1, Notice of Decision, for Reconsideration and Appeal information.